

### **REMARKS**

In the Office Action<sup>1</sup> mailed July 21, 2008, the Examiner objected to the specification and rejected claims 4-7 under 35 U.S.C. § 102(b) as being anticipated by Werner et al. (U.S. Publication No. 2002/0168652, hereafter "Werner").

By this Amendment, Applicants amend the specification, amend claims 4 and 5, and cancel claims 6 and 7. Claims 4 and 5 remain pending and under consideration.

Applicants have amended the specification and thus request withdrawal of the objection to the specification.

Applicants respectfully traverse the rejection of claims 4-7 under 35 U.S.C. § 102(b) as being anticipated by Werner.

Claim 4, as amended, recites a bioassaying apparatus, comprising, among other things, "a substrate holder for holding and rotationally driving a substrate for bioassay, the substrate including a reaction region and an information region, the reaction region being formed on an upper layer of the substrate, and the information region being formed on a lower layer of the substrate . . . , the reaction region receiving fluorescence . . . from a lower side of the substrate . . . , wherein the lower layer is spaced from the upper layer in a thickness direction by at least a depth of focus of the fluorescence," (emphasis added). Werner fails to anticipate claim 4.

Werner, at paragraph [0091], discloses,

The cap portion 130 includes the inlet port 132 and the vent port 134. Optional trigger markings 135 may be included on the surface of a

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<sup>1</sup> The Office Action may contain statements characterizing the related art, case law, and claims. Regardless of whether any such statements are specifically identified herein, Applicant declines to automatically subscribe to any statements in the Office Action.

thin semi-reflective layer [151], as best illustrated in FIGS. 24 and 26. Trigger markings 135 may include a clear window in all three layers of the bio-disc, an opaque area, or a reflective or semi-reflective area encoded with information that sends data to the processor 126, shown in FIG. 27, which in turn interacts with the operative functions of the interrogation beam 199, shown in FIGS. 24 and 27. (Emphasis added).

Further, Werner, at paragraph [0102], discloses, "FIG. 28 also shows the active layer 154 applied over the thin semi-reflective layer 151," and at paragraph [0056], discloses, "target DNA hybridizes directly with capture DNA bound to the active layer of a bio-disc," (emphasis added). Accordingly, Werner teaches that active layer 154, on which hybridization is performed, is formed *directly* on semi-reflective layer 151, which contains readable information.

Werner does not teach that active layer 154 and semi-reflective layer 151 are spaced in a thickness direction by a depth of focus of fluorescence. Accordingly, Werner fails to teach a combination comprising "a substrate holder for holding and rotationally driving a substrate for bioassay, the substrate including a reaction region and an information region, the reaction region being formed on an upper layer of the substrate, and the information region being formed on a lower layer of the substrate . . . , the reaction region receiving fluorescence . . . from a lower side of the substrate . . . , wherein the lower layer is spaced from the upper layer in a thickness direction by at least a depth of focus of the fluorescence," as recited in amended claim 4 (emphasis added).

Claim 4 distinguishes over Werner. Claim 5 depends from claim 4 and distinguishes over Werner at least due to its dependence.

Applicants have canceled claims 6 and 7. Accordingly, the rejection of claims 6 and 7 under 35 U.S.C. § 102(b) as being anticipated by Werner is moot.

In view of the foregoing remarks, Applicant respectfully requests reconsideration of this application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: October 21, 2008

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